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Attorneys for BRIAN WAYNE WENDT

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Case No. CR-17-00533-EMC

Plaintiff,

VS.

JONATHAN JOSEPH NELSON, et al.,

Defendants.

BRIAN WENDE'S UNOBPC

**BRIAN WENDT'S UNOPPOSED
MOTION FOR POST-SENTENCING
HEARING ON OUTSTANDING
CONTESTED FORFEITURE ISSUES**

Date: June 13, 2024, 9:15 am

**Dept. The Honorable Edward M. Chen,
District Judge**

**BRIAN WENDT'S UNOPPOSED MOTION FOR POST-SENTENCING
HEARING ON OUTSTANDING CONTESTED FORFEITURE ISSUES**

Undersigned counsel for Brian Wendt hereby submit this unopposed motion. Mr. Wendt's sentencing in this matter is presently scheduled to occur on June 13, 2024. The final PSR was timely disclosed to Mr. Wendt and his counsel and the parties' sentencing memoranda have been timely filed. In Mr. Wendt's sentencing memorandum, undersigned

1 counsel set forth the agreement with the United States with regard to the return of most of
 2 Mr. Wendt's personal and Hells Angels related property. The only outstanding item
 3 referenced in Mr. Wendt's sentencing memorandum that remained in dispute was Mr.
 4 Wendt's Hells Angels vest.

5 After the filing of the parties sentencing memoranda, on June 11, 2024, the
 6 government filed an amended bill of particulars on forfeiture as to Brian Wendt. On June
 7 12, 2024, the United States filed an "Application of the United States for Amended
 8 Preliminary Order of Forfeiture" (with a supporting declaration of FBO Special Agent
 9 Kassandra Lane). *See* Dkt. 3743. The items sought to be forfeited now include a different
 10 list of items (mostly guns and ammunition) seized from the Fresno Hells Angels Clubhouse
 11 and from the home where Mr. Wendt was residing at the time of his arrest in 2017. As
 12 stated in Mr. Wendt's sentencing memorandum, he is not contesting the forfeiture of any
 13 guns or ammunition.

14 The only items of property that Mr. Wendt contests in the United States' amended
 15 forfeiture pleadings are described by the United States as follows:

16 Hells Angels clothing, patches, and other items seized from the residence of Brian
 17 Wendt at 648 Auburn St, Tulare, CA on 11/20/2017:

18 a. One Hells Angel vest
 19 b. Hells Angels patches¹

20 *See* Dkt. 3743, p. 4.

21 With respect to these unresolved criminal forfeiture issues, undersigned counsel for
 22 Mr. Wendt reports that she has met and conferred with Assistant United States Attorney
 23 Daniel Pastor today, June 12, 2024, regarding these items. Mr. Pastor was recently assigned

24
 25
 26 ¹ "Patches" have been added to the United States' forfeiture notice and request. At the time of filing her Sentencing
 27 Memorandum, undersigned counsel understood that all of Mr. Wendt's personal belongings would be returned to
 28 him except for the vest (the parties had no agreement as to the vest as discussions were ongoing). It appears that in
 fact the United States is also seeking the return of unspecified Hells Angels "patches". Mr. Wendt hereby provides
 notice that he contests the forfeiture of these patches as well.

1 responsibility for representing the United States in connection with this unresolved
 2 criminal forfeiture issue related to Mr. Wendt.

3 Criminal forfeiture issues are controlled by Federal Rule of Criminal Procedure
 4 32.2. Mr. Pastor and undersigned counsel have discussed how the parties propose to
 5 comply with Rule 32.2, in light of Mr. Wendt's intent to request a hearing and present
 6 evidence concerning forfeiture, as provided for in Rule 32.2(B)(1)(b). As to Mr. Wendt,
 7 the government has lodged its revised proposed preliminary order of forfeiture that
 8 identifies with specificity the items as to which it seeks forfeiture. While neither statute nor
 9 rule require the government to lodge a proposed preliminary order of forfeiture, Rule 32.2
 10 does contemplate that a preliminary order of forfeiture be entered sufficiently in advance
 11 of entry of judgment to permit the parties to propose revisions or modifications. Rule
 12 32.2(B)(1)(b) also requires the Court to conduct a hearing where forfeiture is contested, as
 13 it is here, as Mr. Wendt does intend to contest certain portions of the proposed preliminary
 14 order of forfeiture (namely, the forfeitability of his non-HASC vest and patches).

15 Therefore, after consulting with counsel for the United States and in recognition of
 16 the schedule already requested by codefendant Jon Nelson, Mr. Wendt moves this Court to
 17 establish the following schedule for resolution of the contested forfeiture issues:

18 1) The United States has, today, June 12, 2024, lodged a proposed preliminary order
 19 of forfeiture as to Brian Wendt that identifies with specificity all of the items as to which
 20 it seeks forfeiture (*see* Dkt. 3743);

21 2) Mr. Wendt will file no later than July 16, 2024, his memorandum in opposition
 22 to the proposed forfeiture of his vest and patches, identifying with specificity the bases for
 23 his opposition to the forfeiture of those items of personal property;

24 3) The United States will file no later than July 30, 2024, its response to Mr. Wendt's
 25 memorandum.

26 4) The Court will conduct a hearing as required by Rule 32.2 on a date convenient
 27 to the Court and the parties, said date to be set at the sentencing hearing on June 13, 2024,
 28 so long as that hearing does not occur between July 29 and August 14, 2024, when

1 undersigned counsel K. Alexandra McClure is out of the country and unavailable.

2 Mr. Wendt does not object to this Court conducting his sentencing hearing on June
3 13, 2024, but holding in abeyance entry of judgment until this Court conducts the hearing
4 proposed by the parties and that is required by Rule 32.2(B)(1)(b) and rules upon the
5 contested forfeiture issues.

6 The United States does not oppose this motion, and the protocol and dates set forth
7 here are based upon consultations between undersigned counsel and AUSA Daniel Pastor.

8 Dated: June 12, 2024.

9 Respectfully Submitted,

10 JOHN T. PHILIPSBORN
K. ALEXANDRA McCLURE

11 */s/ K. Alexandra McClure*
12 K. ALEXANDRA MCCLURE
13 *Attorneys for Brian Wayne Wendt*

14 **DECLARATION OF K. ALEXANDRA McCLURE**

15 1. I, K. Alexandra McClure I am an attorney at law duly licensed to practice before
16 this Court. Along with John Philipsborn, I am counsel of record for Brian Wayne Wendt
17 in this action. I have personal knowledge of the facts set forth in this Declaration and, if
18 called as a witness, could and would testify competently to such facts under oath.

19 2. Today, I met and conferred with Assistant United States Attorney Daniel Pastor
20 concerning the contested criminal forfeiture issues in this matter (Mr. Wendt's vest and
21 "patches"). Mr. Pastor was recently assigned to represent the United States in connection
22 with those forfeiture issues.

23 3. Based upon our discussions, Mr. Pastor and I have agreed that Mr. Wendt will
24 move this Court to establish a briefing schedule concerning disputed forfeiture issues and
25 to set a hearing as required by Federal Rule of Criminal Procedure 32.2(B)(1)(b). Mr.
26 Pastor has informed me that the United States does not oppose this motion. Mr. Pastor
27 asked that the briefing schedule for Mr. Wendt's forfeiture issues be the same as the one
28

1 previously requested by Mr. Nelson. I have agreed upon the filing dates proposed in Mr.
2 Nelson's motion, and the United States does not oppose Mr. Wendt's motion.

3 4. I have discussed with Mr. Wendt that this Court will conduct his sentencing
4 hearing on June 13, 2024, as scheduled, but may hold in abeyance entry of judgment until
5 the conclusion of the contested forfeiture proceedings. Mr. Wendt does not object to this
6 Court refraining from entering judgment until this Court resolves the contested forfeiture
7 issues.

8 5. Mr. Pastor has informed me that he is available throughout the month of
9 August 2024 if this Court agrees and is available to conduct the contested hearing in
10 August 2024. However, I am only available *after* August 14, 2024, as I am out of the
11 country on a previously scheduled trip from July 29, 2024, until August 14, 2024. The
12 parties will be prepared to address scheduling with the Court at sentencing on June 13,
13 2024.

14 I declare under penalty of perjury under the laws of the United States of America
15 that the foregoing is true and correct. Executed on this 12th day of June 2024.

16 /s/ K. Alexandra McClure
17 K. ALEXANDRA McCLURE
18 Attorney for Brian Wendt
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